

LB 2827
.U6
1912c
Copy 1

EXCHANGE OF SCHOOL LANDS.

Report, July 12, 1912.



Class LB2827

Book .U6
1912e

Calendar No. 828.

62D CONGRESS, }
2d Session. }

SENATE.

} REPORT
No. 945.

EXCHANGE OF SCHOOL LANDS.

JULY 18, 1912.—Ordered to be printed.

U. S.
Mr. WORKS, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany S. 5068.]

The Committee on Public Lands, to which was referred the bill (S. 5068) to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes, having had the same under careful consideration, beg leave to recommend the following amendments:

Page 1, line 4, after the word "authorized," insert the words "in his discretion."

Page 2, line 2, strike out the word "made," and insert in lieu thereof the word "approved."

Page 2, line 4, strike out the words "upon approval of such exchange."

Page 2, line 5, after the word "State," add the following:

Provided, That upon completion of the exchange the lands relinquished, conveyed, or assigned as base lands shall immediately become a part of the reservation within which they are situate, and in case the same shall be found within the exterior limits of more than one reservation they shall become a part of that reservation which was first established: *Provided further*, That this act shall not be construed to authorize the approval of selections embracing lands withdrawn as mineral under the act of June twenty-fifth, nineteen hundred and ten, entitled, "An act to authorize the President of the United States to make withdrawals of public lands in certain cases" (Thirty-sixth United States Statutes at Large, pages eight hundred and forty-seven to eight hundred and forty-eight), until such lands have been found to be nonmineral and for that reason restored, but nothing herein contained shall prevent a limited approval, when the lands are within only a coal withdrawal, excluding from the approval coal deposits;

At the end of the bill add the following: "*And provided further*, That the provisions of this act shall not apply to the State of Idaho."

As thus amended the committee recommends that the bill do pass.

There is at the present time a bill (H. R. 25738) before the House of Representatives which is identical in its provisions to S. 5068 as amended by your committee. The report of the House Committee on the Public Lands on this bill gives in full the need of such

legislation as provided for in S. 5068, and said House report, which is as follows, is hereby made a part of this report:

[House Report No. 1009, Sixty-second Congress, second session.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 25738) to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes, having had the same under consideration, report it back without amendment and with the unanimous recommendation that the bill do pass.

This legislation is recommended by the Department of the Interior, the Department of Agriculture, and the Department of Justice, and also the authorities of the State of California, and also by the Legislature of the State of California, which is for the purpose of carrying out an adjustment and settlement made between the Land Department and the authorities of the State of California and confirmed by the legislature of that State. This legislation is necessary and is urged by the Department of the Interior as well as by the authorities of the State of California, as will appear from the hearings had before the committee on H. R. 19344.

The committee has had full hearings upon the matter involved in this bill, which hearings have been printed. The hearings applied to H. R. 19344, the provisions of which are incorporated in this bill with the amendments, which amendments are recommended by the various departments.

The reports of the Department of the Interior, the Department of Justice, and the Department of Agriculture, and a copy of the act of the Legislature of the State of California and reports of the Attorney General and Surveyor General upon the State follow. By request the chairman of the Public Lands Committee submitted the matter to the Department of the Interior under bill H. R. 25738, and on July 15, 1912, Mr. Samuel Adams, First Assistant Secretary, Department of the Interior, made the following report:

DEPARTMENT OF THE INTERIOR,
Washington, July 15, 1912.

HON. JOSEPH T. ROBINSON,

Chairman Committee on Public Lands, House of Representatives.

SIR: Surveyor Gen. Kingsbury, of the State of California, has left with me a copy of H. R. 25738, being "A bill to authorize the Secretary of the Interior to exchange lands in school sections within an Indian, military, national forest, or other reservation, and for other purposes."

This bill is identical with H. R. 19344, as amended, with the following additional proviso:

"*Provided further*, That this act shall not be construed to authorize the approval of selections embracing lands withdrawn as mineral under the act of June twenty-fifth, nineteen hundred and ten, entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases' (Thirty-sixth United States Statutes at Large, pages eight hundred and forty-seven to eight hundred and forty-eight), until such lands have been found to be nonmineral and for that reason restored, but nothing herein contained shall prevent a limited approval, when the lands are within only a coal withdrawal, excluding from the approval coal deposits."

H. R. 19344 has been the subject of a previous report by this department. With respect to the additional amendment, I have to report that as amended it is but declaratory of the policy of this department respecting action upon indemnity school land selections. Such a selection is not effective until approved, and until such approval the lands selected may be set apart or appropriated for any public use, and their character, as to mineral or otherwise, is open to inquiry and investigation. Departmental approval is never given to an indemnity selection so long as the lands remain withdrawn or are under investigation as to their mineral character. The department, while believing the amendment to be unnecessary, sees no serious objection to its incorporation into the pending measure if thought advisable.

It was stated to me by Gen. Kingsbury that the committee was favorable to the bill in its amended form, but desired, before taking final action thereon, to be advised as to the views of this department, and I am making this report at this time without a formal reference from your committee in order to facilitate action upon the measure.

Very respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

On the request of Mr. Raker, member of the Committee on the Public Lands, the proposed amendment to H. R. 19344 was submitted to Hon. Walter L. Fisher, Secretary of the Interior, which amendment is included and made a part of this bill and thereby H. R. 25738 was introduced, which report is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1912.

HON. JOHN E. RAKER,
House of Representatives, Washington, D. C.

SIR: At your informal request, I have considered the advisability, from a governmental standpoint, of accepting the following proposed amendment to H. R. 19344, namely:

"And provided further, That this act shall not be construed to authorize the approval of selections embracing lands withdrawn as mineral under the act of June twenty-fifth, nineteen hundred and ten, entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases' (Thirty-sixth United States Statutes at Large, pages eight hundred and forty-seven and eight hundred and forty-eight) until such lands have been found to be nonmineral and for that reason restored; but nothing herein contained shall prevent a limited approval, when the lands are within only a coal withdrawal, excluding from the approval coal deposits."

Responding thereto, I have to say that this amendment is but declaratory of the uniform policy of this department respecting action upon pending indemnity school selections of any character whatsoever. It is the ruling of this department that such a selection is not effective until approved, and that until such approval the lands sought to be selected may be appropriated for any public use, and the character of the selected lands is open to inquiry and investigation. It follows, therefore, that approval is never given to an indemnity selection so long as the lands may be withdrawn or are under investigation as to their mineral character, and in event the lands are found to be mineral the selection is canceled.

The department, therefore, while believing the amendment to be unnecessary, sees no objection to its incorporation in the pending measure, if thought advisable,
Very respectfully,

WALTER L. FISHER, *Secretary*.

The following telegrams passed between W. S. Kingsbury, surveyor general of the State of California, and M. C. Glenn, deputy attorney general, and Mr. Raker and the Hon. U. S. Webb, attorney general.

The telegram of Mr. Raker is the same as that of Mr. Kingsbury and the attorney general's telegram is that hereafter set out:

WASHINGTON, D. C., July 8, 1912.

M. C. GLENN,
Deputy Attorney General, Sacramento, Cal.:

Is this amendment drawn by Clements, approved by Raker, Rankin, and myself, satisfactory?

"That this act shall not be construed to authorize the approval of selections embracing lands withdrawn as mineral under the act of June twenty-fifth, nineteen hundred and ten, until such lands have been found to be nonmineral and for that reason restored; but nothing herein contained shall prevent a limited approval, when the lands are within only a coal withdrawal, excluding from the approval the coal deposits."

Please wire early answer.

W. S. KINGSBURY.

SACRAMENTO, CAL., July 9, 1912.

HON. W. S. KINGSBURY,
New Willard Hotel, Washington, D. C.:

I think the proposed amendment is satisfactory. Even without this amendment the Secretary would not approve selections of land embracing lands withdrawn until the mineral character of the land is established, and proposed amendment simply states such facts.

M. C. GLENN,
Deputy Attorney General.

SAN FRANCISCO, CAL., July 9, 1912.

HON. J. E. RAKER, M. C., Washington, D. C.:

Additional of proviso as suggested in your telegram of 8th instant satisfactory to me.

U. S. WEBB, *Attorney General*.

In relation to that part of the bill found on page 3, commencing with the word "Provided," in line 4, down to and including the word "established," in line 10, submitted to the Department of Justice, the following report was made thereon:

DEPARTMENT OF JUSTICE,
Washington, D. C., June 14, 1912.

HON. JOHN E. RAKER, M. C.,
House of Representatives.

MY DEAR MR. RAKER: I read with much interest your report No. 566 on H. R. 19344, as amended. The title of the bill is "to authorize the Secretary of the Interior to exchange lands for the school sections within an Indian, military, national forest, or other reservation, and for other purposes." The department addressed the chairman of the Public Lands Committee concerning this measure February 7, 1912, and its letter is included among the documents printed in your report. That, however, was before the amendments were suggested.

I desire now to call your attention to the fact that by the introduction of the proviso a distinction appears to have been drawn between national forests and other reservations which evidently was not intended and which should be corrected. The bill as amended provides that any approved exchange shall restore full title in the United States to the base land, etc. The proviso then enacts that such base lands so restored, when situate within the exterior boundaries of national forests, shall immediately become part thereof. This leaves in some doubt whether lands situate within an Indian or some other reservation than a forest reservation would also become a part of that reservation upon being restored, or would become public land open to entry as such. There is no more reason, I think, for protecting the forests in this respect than for protecting the Indian, military, or other reservations. Indeed, I feel, and I think your committee will agree with me, that where the interests of the Indians are concerned particular care should be taken to see to it that they suffer no harm. Consequently I suggest that the proviso be amended so as to read as follows:

"Provided, That upon completion of the exchange, the lands relinquished, reconveyed, or assigned as base lands, shall immediately become a part of the reservation within which they are situate, and in case the same shall be found within the exterior limits of more than one reservation they shall become a part of that reservation which which was first established

Respectfully,

ERNEST KNAEBEL
(For the Attorney General),
Assistant Attorney General.

The following letter was addressed to the members of the committee relating to the last proviso of the bill, commencing on line 10, page 2:

JULY 11, 1912.

HON. JOHN E. RAKER,
House of Representatives.

DEAR SIR: You will recall that sometime ago I communicated with you concerning H. R. 19344, a bill "to authorize the Secretary of the Interior to exchange land for school sections within an Indian, military, national forest, or other reservations, and for other purposes."

At that time I was urging objections of mineral claimants, in California particularly, to the bill, because it appeared that if passed in the language in which it was introduced it would be very injurious to their rights under the act of June 25, 1910 (36 Stat., 847).

I now desire to inform you that Hon. W. S. Kingsbury, surveyor general of the State of California, and myself, representing the mineral claimants, have reached an agreement as to an amendment which will be satisfactory to all parties. It is as follows:

"And provided further, That this act shall not be construed to authorize the approval of selections embracing lands withdrawn as mineral under the act of June twenty-fifth, nineteen hundred and ten, entitled, 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases' (Thirty-sixth United States Statutes at Large, pages eight hundred and forty-seven to eight hundred and forty-eight) until such lands have been found to be nonmineral, and for that reason restored; but nothing herein contained shall prevent a limited approval when the lands are within only a coal withdrawal, excluding from the approval coal deposits."

This amendment was prepared in the Interior Department and has the approval of the Secretary.

The mineral claimants will therefore have no objection to the passage of the bill, provided the foregoing amendment is added.

As a matter of fact, the mineral claimants believe that the bill should pass, as it contains measures for the protection of the general interest of the State of California, and it is hoped that you can cooperate to the end that it may be enacted during the present session.

Yours, very truly,

JOHN M. RANKIN.

While the bill H. R. 19344 was under consideration, bill H. R. 25738 was intended to take its place, and the following report was made thereon by the first assistant attorney of the Department of the Interior:

MAY 16, 1912.

HON. JOHN E. RAKER,
House of Representatives.

SIR: In accordance with your letter of the 13th instant, I submit the following respecting H. R. 19344, being a bill "to authorize the Secretary of the Interior to exchange lands in school sections within an Indian, military, national forest, or other reservation, and for other purposes."

This bill was drawn by me in conference with representatives of the State of California. In my opinion, the legislation was not absolutely necessary, as I believe that adjustments may be accomplished under sections 2275 and 2276 of the Revised Statutes as amended by the act of February 28, 1891 (26 Stat., 796), and this department has since 1901 followed the opinion of Assistant Attorney General, now Justice, Van Devanter. It seems that prior to said opinion, to wit, in 1897, in the case of *Hibbard v. Slack* (84 Fed., 571), a contrary holding was made, it being therein held that surveyed school sections in place could not be exchanged with the Government for other lands, under the sections of the Revised Statutes above quoted. I do not find that this decision of the court has ever been adverted to in any other judicial determination. The department was advised of the decision and has refused to follow the same. In this connection it may be said that if the decision of the court in the case cited be a correct exposition of the law it would apply equally to other of the public-land States as well as to California.

Based upon the decision of Assistant Attorney General Van Devanter referred to, the school grants in the several States have been administered since 1901, and many thousand acres of land have been certified to the several States, based upon surveyed school sections in place within an Indian, military, or other reservation, the States being desirous of taking indemnity rather than awaiting the termination of the reservation.

In the State of California many thousand acres of indemnity selections have accumulated, owing to the fact that the State had exceeded its grant in some instances by duplication of base, and the question of furnishing the Government with other base to supply the deficiency in previous approvals has only recently been satisfactorily adjusted, legislation by the State being necessary in order to accomplish this result. The exact amount of pending indemnity selections in the State of California dependent upon surveyed school sections within an Indian, military, or other reservation, can not be determined at this time.

The legislation under consideration was only determined upon in order to remove any possible question as to the availability of the base offered by the State, in view of the decision in the case of *Hibbard v. Slack*, supra.

It has been suggested that a large number of pending selections in the State of California were made on behalf or in the interest of Hyde, Benson, and others, and that a recognition of the present selections will result to their benefit. Respecting this matter the department has no information. It may be that many of these selections were in the first instance made for the benefit of Hyde and others, but it has been represented to the department that the pending selections have in many instances been subject of transfer and the land selected enhanced in value by reason of improvements placed upon the lands by the present claimants. With respect to this feature of the case the department has no positive showing otherwise than as represented in connection with the adjustment with the State hereinbefore referred to.

Personally, I am led to believe that the present legislation is not in the interest of Hyde, Benson et al, but just to the contrary. It is known that one Fred Lake has sought to acquire from the State title to the lands made the basis for the pending selections; that the State has resisted his claimed right of purchase, and that the matter is pending in the courts under his claimed right. I can not see how this bill could affect this pending action. The sole interest of the Government, however, in the premises is merely to see that it receives an equal quantity of land in lieu of that certified to the State as indemnity, and that the title which it takes under the exchange is a clear one.

It is hoped that the statement herein made fully covers the matters desired to be reported upon by your said letter of the 13th instant. If, however, any particular matter is overlooked I should be pleased to make a statement as to the facts relative thereto so far as shown by the records of the department or are within my personal knowledge.

Very respectfully,

F. W. CLEMENTS,
First Assistant Attorney.

And upon this same subject the Assistant Attorney General, under date of June 20, 1912, made the following report:

DEPARTMENT OF THE INTERIOR,
Washington, June 20, 1912.

Hon. J. E. RAKER,
House of Representatives.

SIR: In your recent interview respecting H. R. 19344, being "A bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes," you said it had been represented that probably thereunder the United States might be forced to exchange lands to which it had full title for other lands to which the State had no title, having previously disposed of the same or permitted others to acquire rights therein under the State laws, which must ultimately prevail, and you further stated that objection to the pending bill was, presumably, based upon the claim being asserted by one Lake to certain lands made the base for pending selections, which selections might be passed to approval thereunder. Relative to the pending bill, I desire to say that it removes all question as to the right to make exchanges with the several States where school sections are, after survey, embraced in an Indian, military, forest, or other Government reservation.

In my opinion sections 2275 and 2276 of the Revised Statutes clearly admit of such exchanges; nevertheless, it was held in *Hibbard v. Slack* (84 Fed. Rep., 571) that such exchanges could not be made under said sections. The Government has never followed that holding and many thousands of acres included in reservations after survey have been exchanged with the several States under said sections. Numerous selections looking to such an exchange are still pending, particularly in California. The school indemnity selections in said State have been suspended for a number of years because of certain excesses in approvals heretofore made for the adjustment of which an agreement has but recently been reached. Many of these selections date back to the early eighties.

Because of the question as to whether the State land officers of California were empowered to make exchanges of surveyed school sections where in Government reservations, under sections 2275 and 2276, prior to the State legislation of 1909, one Lake has sought to acquire from the State title to the surveyed school sections made the base for exchanges prior to the said last-mentioned legislation, and although the State has denied his applications to purchase, he is attempting to compel the State officers, through certain suits instituted in the courts of California, to make the sales. Now, should the pending legislation be passed, all question as to the power to make the exchanges under sections 2275 and 2276 will be removed and the exchanges, when made, will be subject to the limitations and conditions of said sections.

In the administration of exchanges under said sections the Land Department has always required the several States to furnish an abstract of title to the base land offered in exchange, showing a clear title thereto in the State before any approval is given to the proposed exchange, and this will continue to be required, and when furnished, carefully scrutinized, even should this legislation be enacted. Hence, it must be apparent that the passage of the proposed bill will not offer any greater opportunity to defraud the United States than is now extended by existing law, at the same time removing any question as to the power to make exchanges in the instances named.

As to the tracts now being claimed by Mr. Lake, no exchange therefor will be approved until all question as to his rights in the base lands have been settled and determined. This would seem to remove any question as to the possible results that may follow the passage of the proposed legislation, due to the claimed rights of Mr. Lake, or others, in and to any of the base lands that may be offered in exchange thereunder.

Very respectfully,

CHARLES W. COBB,
Assistant Attorney General.

The following reports were made to accompany bill H. R. 19344 and are applicable and refer to H. R. 25738.

[House Report No. 566, Sixty-second Congress, second session.]

* * * * *

[H. R. 19344, Sixty-second Congress, second session.]

"A BILL To authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes."

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to make exchange of lands with the several States for those portions of the lands granted in aid of common schools, whether surveyed or unsurveyed, which lie within the exterior limits of any Indian, military, national forest, or other reservation, the said exchange to be made in the manner and form and subject to the limitations and conditions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, as amended by act of February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes, page seven hundred and ninety-six), and any such exchange whether heretofore or hereafter made shall restore full title in the United States to the base land, upon approval of such exchange, without formal conveyance thereof by the State."

By request, the chairman of the Public Lands Committee submitted the matter to the Department of the Interior, and on February 19, 1912, Mr. Samuel Adams, Acting Secretary of the Department of the Interior, made the following report:

DEPARTMENT OF THE INTERIOR,
Washington, February 19, 1912.

HON. JOSEPH T. ROBINSON,

Chairman Committee on the Public Lands, House of Representatives.

SIR: In response to your request for a report on House bill 19344, entitled "A bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes," I have the honor to submit the following:

It is understood that the bill was introduced at the instance of the officials of the State land department of the State of California for the purpose of and with a view to aiding the State in the adjustment of the grant to the State for common-school purposes, which has been in a very unsatisfactory condition and practically a state of suspension for several years. The provisions of the bill are largely declaratory of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the United States Revised Statutes, as construed and administered by the department for a number of years, but as framed expressly authorizes exchanges of lands which are within the exterior limits of any Indian, military, national forest, or other reservation. It is also provided that any such exchange, whether heretofore or hereafter made, shall restore full title to the United States to the base land, upon approval of such exchange, without formal conveyance thereof by the State.

School sections in national forests are now held to be subject to exchange under the provisions of the act of 1891, supra, as lands being otherwise reserved, whereas the bill expressly authorizes the exchange of such lands, whether surveyed or unsurveyed, and vests title in the United States to such sections which have heretofore been used as base for selections made and approved to the various States.

Under the act of 1891 as now administered the exchanges made thereunder are not complete and title to the tracts of land exchanged does not vest in the State until the approval thereof by the Secretary of the Interior and the subsequent certification of the selections to the State by the General Land Office. The title vests in the contracting parties upon the date of the certification and not on the date of the approval of the selections.

As to the clause in the bill providing that no formal conveyance of the base tracts by the State to the United States be necessary to vest title, it may be stated that no such conveyances have been required by the department for a number of years. In an opinion of the Assistant Attorney General of the department, dated January 26, 1901 (30 L. D., 438), the deed of reconveyance was held not to be necessary, for the reason that the selection of indemnity of itself amounted to a waiver of the State's claim, or, in other words, operated to transfer the legal title of the State to the United States.

In that opinion the right of the State to indemnity for school lands in forest reserves is dependent solely on the proposition that the selection of indemnity constituted a waiver of the State's claim and that Congress has full authority to declare what effect

shall be given to such a selection, and no distinction could be based upon the fact that the title to the base lands had or had not vested in the State prior to the selection.

There may have been some doubt heretofore as to the meaning of that clause of section 2275, Revised Statutes, under which exchanges of school lands between the several States and the United States are now effected. If any such doubt has existed, it will be conclusively removed should this bill be enacted into law, and for this reason I recommend that the bill be passed.

Very respectfully,

SAMUEL ADAMS, *Acting Secretary.*

This matter was reported to the Attorney General of the Department of Justice, and on February 7, 1912, he made a report thereon as follows:

DEPARTMENT OF JUSTICE,
Washington, February 7, 1912.

HON. JOSEPH T. ROBINSON,
Chairman Committee on the Public Lands, House of Representatives.

SIR: I have received your letter of February 3, 1912, inclosing for such suggestions and recommendations as may be deemed necessary a copy of H. R. 19344, Sixty-second Congress, second session, authorizing the Secretary of the Interior to exchange lands for school sections within Indian, military, and other reservations.

This bill authorizes the Secretary of the Interior to make exchanges of lands with the several States for those portions of school sections, whether surveyed or unsurveyed, lying within the exterior limits of any reservation, the exchange to be made in the manner and form and subject to the limitations of sections 2275 and 2276 of the Revised Statutes, as amended by the act of February 28, 1891 (26 Stat., 796), and provides that any such exchange, whether heretofore or hereafter made, shall restore to the United States full title to the base land without any formal conveyance by the State.

I have the honor to advise you that authority to make exchanges of school sections included within the exterior boundaries of reservations, prior to the survey of such school sections, already exists under the act of February 28, 1891, *supra*. The Department of the Interior also holds that authority likewise exists under the said act of 1891 to make exchanges of school sections included within the exterior limits of reservations even after the survey of such school sections (see 34 Land Decisions, 599, and cases cited), and I understand that many thousands of acres of such lands have been exchanged. However, it has been held by at least one Federal court that the act of 1891 does not authorize a State to exchange school lands which had been surveyed prior to the creation of the reservation within the exterior limits of which the school section is embraced. (*Hibbard v. Slack*, 84 Fed., 579.) It would seem, therefore, that the enactment of some such legislation as that proposed in this bill will serve a useful purpose.

Respectfully,

ERNEST KNAEBEL
(For the Attorney General),
Assistant Attorney General.

DEPARTMENT OF THE INTERIOR,
Washington, April 17, 1912.

HON. JOHN E. RAKER,
House of Representatives.

SIR: At your instance I have carefully considered the committee's proposed amendment to H. R. 19344, being a bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes, which amendment proposes to change that portion of the bill which now reads "and any such exchange, whether heretofore or hereafter made, shall restore full title to the United States to the base land upon approval of such exchange without formal conveyance thereof to the United States," so as to read, "and any such exchange, whether heretofore or hereafter approved, shall restore full title in the United States to the base land without formal conveyance thereof by the State."

Now, in my opinion, the language employed in both instances means the same thing, but I rather incline to the committee's amendment because it is more direct and perhaps freer from doubt. Of course, no exchange is made until it is approved, and therefore to have the bill provide that "any such exchange, whether heretofore or hereafter approved," is technically more correct, and when so changed renders the latter expression, "upon approval of such exchange," unnecessary.

In this connection I have noted the objections to the proposed change made by the attorney general and surveyor general of the State of California. They seem to fear

that any change in the bill as originally drawn may result in advantage to those seeking to force the State to make sale to them of base lands used in selections already made. I am free to say that I can not see how this amendment can have that effect.

"The power of the Secretary to approve selections is judicial in its nature and implies the duty to determine as of the time of filing the selection, and the doctrine of relation applies to decisions as to validity of such selections." (Syllabus, *Weyerhaeuser v. Hoyt*, 219 U. S., 380.)

The selections by the State have always been accorded segregative effect from the time of their filing and under the decision referred to, if approved, would have relation as of the time of filing.

I do not see how more effective legislation could or should be extended in behalf of the State of California than as hereinbefore indicated, with respect to its selections heretofore or hereafter made, and in conclusion must say that the committee's proposed amendment seems to be entirely satisfactory to the Government and is not shown to be, nor do I believe it will be, prejudicial to the interests of the State in the premises.

Very respectfully,

F. W. CLEMENTS,
First Assistant Attorney.

The following is a letter from the Department of Agriculture:

UNITED STATES DEPARTMENT OF AGRICULTURE,
Washington, D. C., April 16, 1912.

HON. JOS. T. ROBINSON,
Chairman Committee on Public Lands, House of Representatives.

DEAR MR. ROBINSON: I am in receipt of your letter of April 10 inclosing a copy of the bill (H. R. 19344) introduced by Mr. Raker to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes.

By letter of February 15, 1912, to you, I reported upon this bill and submitted the recommendations of this department. Since my first letter has evidently not reached its intended destination, I inclose a copy of it for your information.

Very sincerely, yours,

JAMES WILSON, *Secretary.*

UNITED STATES DEPARTMENT OF AGRICULTURE,
Washington, D. C., February 15, 1912.

HON. JOSEPH T. ROBINSON,
Chairman Committee on Public Lands, House of Representatives.

DEAR MR. ROBINSON: Your letter of February 3 inclosing a copy of the bill (H. R. 19344) to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes, is received.

The bill has been carefully considered in this department and it seems that it will not change the existing law with respect to State indemnity selections other than it is at the present time interpreted by the Secretary of the Interior, who has jurisdiction to construe such matters. Its purport seems to be more in the nature of having Congress confirm what is being done under existing law. I would suggest, however, that the following amendment be added at the end of the bill, to clearly define the status of the reconveyed or relinquished lands of the State which fall within the boundaries of national forests.

"*Provided*, That upon completion of the exchange, the lands relinquished, reconveyed, or assigned as base lands which fall within the exterior boundaries of national forests shall immediately become a part of the national forest within which they are situated."

Very sincerely, yours,

JAMES WILSON, *Secretary.*

A letter dated February, 1912, by Mr. A. W. Sanborn, deputy surveyor general, upon this same subject. It is as follows:

WASHINGTON, D. C., *February, 1912.*

HON. JOHN E. RAKER,
House of Representatives.

MY DEAR SIR: In connection with the draft of bill left with you yesterday, entitled "A bill to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes," I wish to state that the measure is proposed at the earnest solicitation of the

surveyor general and the attorney general of the State of California, and was drafted after consultation with officials of the Interior Department.

Gen. Webb, Gen. Kingsbury, and myself are of the opinion that such legislation is desirable and important, in aid of the adjustment of the school grant concerning which a controversy has long existed.

As you well know, nothing so retards the development of a State as uncertainty and litigation over land titles, and conditions in California in this respect have certainly been very distressing because of the long delay in the issuance of titles, or evidence of title, by the General Government.

I am of the opinion that the measure proposed, if enacted, will expedite the adjustment of the difficulty now existing, and I solicit your earnest endeavor in its enactment.

I inclose herewith, for your information, a copy of the basis of adjustment of the California school grant, agreed upon by officials of the Department of the Interior and the State authorities; also a copy of the recent act of the legislature, accepting the same and providing for carrying it into effect.

Very respectfully,

A. W. SANBORN.

Some time in July or August, 1911, the attorney general of the State of California and the surveyor general of California appeared at Washington and had a conference with the United States Attorney General, and also the Secretary of the Interior and the Commissioner of the General Land Office, in regard to the lands in the State of California which are tied up and creating a great deal of trouble between those that claimed them—the State and others—and amounting to somewhere from 400,000 to 450,000 acres of land.

This is the basis of adjustment. It reads as follows:

“BASIS OF ADJUSTMENT.

“(1) That there be paid to the United States, as under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), \$1.25 per acre in satisfaction of all excess certifications of indemnity school lands which occurred prior to the date of approval of said act, and for which said lands no payment has as yet been made to the United States.

“(2) That new and valid bases be designed by the State for all selections that have been or may be approved, made on the basis of lands in sections 16 and 36, claimed or reported to be mineral in character, or embraced in forest or other reservations, and wherein such base tracts have been, or may be, sold or encumbered by the State; provided, however, that new base need not be designated in any case wherein the United States has disposed of, by patent, the tract in lieu of which indemnity was claimed and granted.

“(3) That new and valid bases be designated by the State for approved selections in all cases wherein there have been, or may be, excesses in certifications occurring since March 1, 1877.

“(4) That lands in sections 16 and 36, which, under the provisions of the act of Congress approved March 1, 1877 (19 Stat., 267), are the property of the United States, and which have been sold or encumbered by the State, are to be selected by the State, it being understood that the requirements of publication of notice and the filing of nonmineral affidavits in support of such selections be waived by the Land Department of the United States.

“(5) That the State of California will enact such additional laws as may be necessary to carry into effect the plan of adjustment herein contained, and the Land Department of the Federal Government will favor and will use its good offices to have passed and approved such legislation by Congress as may be necessary to consummate such plan.

“(6) That the Land Department will immediately proceed with the listing of all selections made by the State where the base is free from objection and the lands applied for are subject to selection by the State; provided, the governor of the State of California shall first agree to specify and state in a call or proclamation for a special or extraordinary session of the State legislature, to be made and held some time during the year 1911, as one of the purposes for which the legislature is so convened the subject and consideration of such legislation as may be required to consummate the within plan of settlement; and provided further, that if such necessary laws be not enacted at such special session the plan of adjustment herein contained may be deemed without force and effect.”

Under and in pursuance of this agreement the governor of the State of California included in a call for an extraordinary session of the Legislature of California the

provisions contained in this agreement, and thereunder, and on the 24th day of December, 1911, the Legislature of the State of California passed the following act:

"CHAPTER 21.—An act to authorize the adjustment and settlement of a controversy existing between the United States and the State of California, in relation to the grants made by Congress to the State of California for the benefit of the public schools, and internal improvements, authorizing the conveyance of land by officers of the State for the purpose of making such adjustment and settlement, and making an appropriation to carry out the provisions hereof.

"[Approved December 24, 1911.]

' Whereas under the terms and provisions of certain acts of Congress of the United States 500,000 acres of land were granted to the State for internal improvement and the sixteenth and thirty-sixth sections in each township, and lands in lieu thereof, were granted to the State of California for school purposes; and

"Whereas it is claimed by the United States that prior to March 1, 1877, there were listed to the State of California approximately 16,000 acres of land, in excess of the amount of land to which the State was justly entitled, also that the State has received indemnity for certain sixteenth and thirty-sixth sections of land assumed to be within the exterior boundaries of Mexican grants, which sixteenth and thirty-sixth sections were subsequently either wholly or partially excluded from such grants and subsequently sold by the State, the total area being approximately 10,151 acres; also that the State has received indemnity for certain sixteenth and thirty-sixth sections, alleged to be mineral in character, which said school sections the State sold in place, either before or after receiving indemnity therefor, the total area being approximately 8,715 acres; also that the State received approximately 2,028 acres in excess of the 500,000-acre grant; and

"Whereas the Department of the Interior has for many years withheld from certification the greater part of the lieu land selected by the State, pending a settlement of said matters, and there remains to be listed to the State upward of 450,000 acres, which, if listed, would be subject to taxation: Now, therefore,

"*The people of the State of California do enact as follows:*

"SECTION 1. There shall be paid to the Federal Government by the State of California, acting through the officers hereinafter mentioned and in the manner and upon the terms and conditions hereinafter set forth, the sum of one and twenty-five one-hundredths dollars per acre for all excess certifications of indemnity school lands, which occurred prior to March 1, 1877, and for which said lands no payment has as yet been made to the United States.

"SEC. 2. The officers of the State of California mentioned in sections 3519 and 3520 of the Political Code of said State are hereby authorized, empowered, and directed, in the manner in said sections provided, to convey to the United States by patent or otherwise such an amount of land in sections 16 and 36, situated in national forests or other reservations, as will equal in area all selections that have been heretofore listed or certified by the Government to the State of California, made in lieu of sections 16 and 36, claimed or reported to be mineral in character, or embraced in forest or other reservations, and wherein such base tracts have been or may be sold or encumbered by the State: *Provided, however,* That no lands shall be patented in any case wherein it shall be found that the United States has disposed, by patent or otherwise, of the tract in lieu of which indemnity was claimed and granted.

"SEC. 3. The officers of the State referred to in section 2 hereof are hereby authorized and directed to convey, by patent or otherwise, to the United States, in addition to the 12,000 acres heretofore granted, an amount of land equal in area to any additional excess in certifications occurring since March, 1877.

"The surveyor general of the State of California is hereby authorized and empowered to locate and select in the United States land offices, for the benefit of persons having certificates of purchase or patents from the State, lands in sections 16 and 36, which, under the provisions of the act of Congress approved March 1, 1877, and commonly known as the Booth Act, are claimed to be property of the United States, but which said lands have been heretofore sold or encumbered by the State. The said lands hereby authorized to be selected are lands which have been heretofore used or designated by the State of California as basis for indemnity selections, and for which the State of California received indemnity, but which said lands in said sections 16 and 36 the said State also sold or encumbered. For the purpose of making the selections hereby authorized to be made, the said surveyor general is hereby authorized and empowered to use and designate any basis or lands mentioned in section 3406a of the Political Code of the State of California, or any other basis, which may be proper or valid in making indemnity selections.

"SEC. 4. For the purpose of carrying into effect the terms and provisions of this act, the surveyor general of the State of California is authorized and directed to ascertain

and determine from the records of his office and the records of the Department of the Interior the amount of lands which should be conveyed to the United States and likewise the number of acres of land as in this act provided for, which the State has, by the terms of this act, authorized and directed payment to be made, and after said facts have been ascertained and determined, the said officers of said State, referred to in sections 2 and 3 hereof, are hereby authorized and directed to make, execute, and deliver for said State, in its name and as its act and deed, any and all written agreements, deeds, patents, or conveyances necessary to carry out and consummate the terms of this act.

"SEC. 5. The sum of \$25,000 is hereby appropriated, out of any moneys in the State treasury not otherwise appropriated, for the purpose of carrying out the provisions of this act and paying all necessary expenses of the surveyor general and attorney general in connection herewith, and the State controller is hereby authorized and directed to draw his warrant or warrants in favor of the United States, or the proper officers thereof, for such amount as may be payable to said United States under the terms hereof, and also to draw his warrant or warrants for the necessary expenses of the surveyor general and the attorney general in carrying out the provisions of this act, and the State treasurer is hereby directed to pay the same."

This is the agreement between the Department of the Interior and the authorities of the State of California—as between those two and not as affecting the rights, whatever they might be, between the State and private individuals. This land has been held, most of it, for years. Great values have been placed upon it by improvements and it has been assessed for many years. The Supreme Court of the State of California has lately held that the land was nonassessable, and therefore parties have been collecting back taxes from the counties; in other words, it is nontaxable in the State of California, and the conditions are such that there can be no adjustment between the State and private individuals and the Government; hence the general legislation.

A letter of the attorney general of the State of California dated March 11, 1912, covering this subject, gives the full history and the purpose of the proposed bill. It is as follows:

STATE OF CALIFORNIA, OFFICE OF ATTORNEY GENERAL,
Sacramento, March 11, 1912.

Hon. JOHN E. RAKER,

Representative in Congress, Washington, D. C.

DEAR SIR: Your favor of February 16, 1912, inclosing copy of H. R. 19344, together with copy of a telegram received by you from Mr. Fred W. Lake in regard thereto, duly received. In reply to your inquiry as to the general situation, I beg to say:

By the act of Congress of 1853 there was granted to the State of California the sixteenth and thirty-sixth sections of land in each township. If, before survey, those sections became subject to preemption or homestead claims, or were mineral in character, or where deficiencies existed on account of fractional townships, the State then became entitled to indemnity for such loss, and might select other lands of equal acreage in lieu thereof. While the grant of these sections was one in present, yet, as the title thereto did not pass until survey, the appropriation of the same by the Government, or by the one claiming through it, before such survey, lost to the State such section or sections so subject to such prior appropriation, and hence the State would be, in such instances, entitled to select other lands in lieu thereof; but as the title of the State does not vest immediately upon survey, a reservation established by the Government subsequently to survey, the exterior boundaries of which would include such sixteenth and thirty-sixth sections, would occasion no loss to the State, the title having already vested in the State and not being divested thereby. Hence the State, notwithstanding the fact that these sections might be within the exterior limits of national reservations created subsequent to survey, had full title and could sell or otherwise dispose of the same. (See *Hibbard v. Slack*, 84 Fed., 571, decided in 1897.)

In the *Hibbard* case it was contended that, by virtue of the act of Congress of February 28, 1891, amending sections 2275 and 2276 of the Revised Statutes of the United States, the State of California was entitled to select other lands in lieu of sixteenth and thirty-sixth sections of school lands, situated within the exterior boundaries of a public reservation, where said sections were surveyed and became the property of the State prior to the date when the reservation was created, but the court held, as above stated, that such was not the fact.

In 1901, however, Assistant Attorney General Van Devanter rendered an opinion, which was adopted by the Secretary of the Interior, to the effect that the State of California could so select other lands in lieu of such surveyed sections, and the department has, apparently, continued to hold to this view.

After the amendment in 1891 of sections 2275 and 2276 of the Revised Statutes of the United States, above referred to, a great many selections were made by the State based upon surveyed school sections situated within the exterior limits of national

forests or national reservations, which are still pending before the General Land Office at Washington for approval or rejection. So far as the General Land Office is concerned, it will in all probability recognize as valid bases surveyed school sections and certify other lands in lieu thereof.

The State continued to make selections, using as bases therefor surveyed school sections situated in national reservations up to some time after the present surveyor general of California, Hon. W. S. Kingsbury, took office in 1907. In an endeavor on his part to administer the duties of his office in a careful manner, he discovered that some question did exist as to the validity of selections so made, and referred the question to me. As a result of my advice to him he discontinued making selections upon surveyed school sections until after the passage of the "Thompson Act," hereafter referred to.

The laws of California were such that after a selection was made, if the land selected (not the bases for the selection) was open to selection or entry, the register and receiver of the local land office thereupon notified the State land office of the acceptance of such selection, and thereupon a certificate of purchase was issued by the State for the selected land, although the title still remained in the United States and could not pass to the State until final action by the commissioner at Washington. The condition, therefore, that the present surveyor general was confronted with at the time he assumed office was this: Several hundred selections had been made in which the State had designated surveyed bases, concerning the validity of which some question might be raised.

The State had issued to most of these State applicants certificates of purchase which also under the law were assignable, and many had been assigned. The surveyor general and myself, after careful consideration of the matter, believed that, under the circumstances, legislation should be provided, to the end that if the surveyed sections used as bases were not available as such when used they should be made so, in order that holders of these certificates of purchase might secure the land described therein. For this purpose the Legislature of California, in 1909, provided that surveyed school sections should be valid bases, and upon the listing of the selected lands to the State the title to such surveyed school sections should immediately vest in the United States. These provisions of the law of California so passed in 1909 were sufficient, so far as the State was concerned, to pass the title to these surveyed school sections to the Federal Government upon the listing of lands in lieu thereof, but if the provisions of sections 2275 and 2276 of the Revised Statutes of the United States were insufficient to authorize the General Land Office to accept selections made upon surveyed school sections, then the law of California would be of no avail; hence, although the department, as above stated, seems to be willing to accept such selections, we deem it important to have an act passed by Congress to the same effect. The act introduced by yourself is intended to accomplish this purpose.

Shortly after Mr. Kingsbury took office as surveyor general of California, in January of 1907, he also discovered that indemnity or lieu lands were almost entirely controlled by F. A. Hyde. Hyde was enabled to control these lands by reason of the fact that until a section of school lands was placed within the limits of a reservation created by proclamation of the President, no lands could be selected in lieu thereof, nor could any applicant file an application for lieu lands in the State land office. For years Mr. Hyde was enabled to secure the first information as to the creation of national reservations, which thereby enabled him, under the laws of California, to file applications before any other person had the necessary information. To correct this condition and to permit the State to secure the benefit of controlling these lieu-lands selections, Senator Thompson, the surveyor general, and myself drafted a bill which is known as the "Thompson bill," and which was passed by the legislature in 1909, which was the first session of the legislature after Gen. Kingsbury took office. This bill withdrew all such sixteenth and thirty-sixth sections from sale or use by any person and provided a method of sale at public auction. The plan has worked very well and has enriched the State to the extent of several hundred thousands of dollars, the last sales bringing close to \$10 per acre instead of \$1.25, as they had previous to that time. It also had the effect of stopping the activities of F. A. Hyde and those operating with him.

At these sales no land is sold directly, but the basis is sold and a certificate of indemnity or scrip issued, which is used as the basis for a selection from vacant Government land.

In the latter part of 1908 we began work on proposed legislation which we deemed necessary to correct the conditions arising by reason of the facts referred to above which resulted in the passage of the so-called "Thompson Act." This act you will find incorporated in the Political Code (secs. 3398 to 3408e). The main objects desired to be attained by such legislation were to enable the State to control the bases for indemnity selections and likewise to make surveyed sections situated within national

reservations available as bases for lieu selections. By making such surveyed sections available as bases, not only would the doubt as to the regularity of selections theretofore so made be removed, but, likewise, it would bring to the State a large increase in price theretofore received for lands, as these sections in place were, to a large extent, quite valueless, whereas if used as bases for lieu selections they would bring, as demonstrated by the operations under the Thompson Act, from \$6 to \$10 per acre.

Mr. Lake, representing some 300 or more applicants, commenced the attempted filing of applications on these surveyed school sections in place in the latter part of 1908 and continued to present applications until the Thompson Act went into effect. He apparently attempted to cover every school section situated within the limits of national reservations, and particularly did he attempt to cover all such sections which had been used as bases for indemnity selections. If he is successful, the greater portion of all such selections made for the past 15 or 20 years will be rejected by the General Land Office at Washington, although the State has already issued, and there have been outstanding for years in a great many instances, certificates of purchase for most of these selected lands. The surveyor general refused to file or to recognize the applications so presented by Mr. Lake for these school sections which had been used as bases for lieu-land selections, and Lake has now commenced in the courts of California, in the names of these applicants, proceedings to enforce the filing of the same. Just as soon as the legislature met in 1909 we attempted to correct the condition of things by withdrawing such school sections so situated within national reservations and providing that they should be used only as bases for indemnity selections, and also by providing that where already so used as bases, such bases should be good and valid; but Lake's contention is that in view of the fact that the applications of the persons represented by him were presented prior to the withdrawal of such lands from sale in place, they acquired a vested right which the subsequent legislation could not destroy. I am strongly of the opinion that this contention will not be upheld by the courts, as it has been held many times that a person gains no vested rights by the mere presentation or filing of an application, and notwithstanding such fact the legislature still has the right to withdraw the lands from sale or to otherwise dispose of them. Mr. Lake objected very strenuously before the legislative committees to the passage of the acts withdrawing these lands from sale, but the Legislature of California, with full knowledge of all the facts, withdrew the same and upheld the position we have taken in every respect.

Of course the many applicants represented by Mr. Lake did not know the conditions prevailing, and in most if not all instances had never seen the lands applied for; but Lake, knowing that some question existed as to the validity of the selections made upon surveyed bases, saw a chance of either securing these school sections in place or so clouding the title thereto as to cause the Land Department of the Government to reject selections based thereon. Of course, among the selected lands will be found many thousands of acres extremely valuable, and it is easy to see that if the applicants for these selected lands, or their assignees, find that their selections are to be rejected by reason of Mr. Lake's activities in attempting to secure the base, they would be willing to pay a large amount per acre to settle with him.

Under all the circumstances, I sincerely believe that there is no other course open but for the State to use every fair and honorable means to make these surveyed sections available as bases for lieu selections. To a certain extent the predecessors in office of Gen. Kingsbury were justified in using surveyed school sections as bases, in view of the opinion of Assistant Attorney General Van Devanter, above referred to, and also in view of the attitude of the department recognizing the right of the State to do so. At all events it would seem to me that the equalities are all on the side of the State lieu-land applicants, and that the persons represented by Mr. Lake have no just complaint because they acted through him entirely, and he knew the exact situation when he attempted to make his filings, and did so knowing that if he was eventually successful the selections made for the lieu-land claimants must be rejected by the department.

I trust that you will pardon the length of this letter, but the matter is of such importance that I deemed it advisable to acquaint you with the facts.

Your wire of 10th instant states, "Public Lands Committee will hear House bill No. 19344, in reference to lieu lands, on March 20," duly received, and I take it that the information contained in this communication answers any questions you desire answered in said telegram.

I desire to thank you for your interest in this matter, and assure you that your efforts are thoroughly appreciated.

Yours, very truly,

U. S. WEBB, *Attorney General*,
By E. B. ROWEN, *Assistant*.

DEPARTMENT OF THE INTERIOR,
Washington, April 2, 1912.

HON. JOHN E. RAKER,
House of Representatives.

DEAR SIR: I have your letter of March 29, 1912, advising that two proposed amendments have been presented to H. R. 19344, "A bill to authorize the Secretary of the Interior to exchange lands for school sections within Indian, military, national forest, or other reservations," the first by Mr. Lake, of Oakland, Cal., the other by Mr. Bolton, of San Francisco, Cal. You quote the proposed amendments and comments thereon addressed to you by the State surveyor general and attorney general of the State of California, and ask for report upon the matters therein involved.

The bill in question, as introduced, is largely declaratory of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the United States Revised Statutes, and in terms authorizes the Secretary of the Interior to make exchanges of lands with the several States for those lands granted in aid of common schools, whether surveyed or unsurveyed, which lie within the exterior limits of any Indian, military, national forest, or other reservation. In the opinion of this department the authority to make such exchanges now exists in said sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891, *supra*, and the department has uniformly so ruled since January 30, 1899. As stated in decision in the case of the State of California (28 L. D., 57-61), the legislation under which forest reservations were authorized was pending before Congress at the time when the act of February 28, 1891, *supra*, was under consideration and became a law only a few days later, "Congress knew when these acts were under consideration that such reservations would necessarily embrace in many instances lands which had been granted, reserved, or pledged to States and Territories for the use of public schools. It surely knew also that these reservations would frequently contain surveyed townships or portions thereof within which would be the school sections 16 and 36, which had passed to the States or were reserved or pledged to the Territories, and that these sections, entirely surrounded by Government lands and sometimes far within the boundaries of the reservation, would be of little or no benefit—as alleged to be the fact in the case at bar—to the States or Territories while the reservations exist."

The conclusion was therefore reached that where a forest reservation includes within its exterior limits a school section surveyed prior to the establishment of the reservation the State, under the authority of the first proviso to section 2275 of the Revised Statutes, amended, may be allowed to waive its right under such section and select other lands in lieu thereof. The same question was involved in the cases of *Dunn et al. v. State of California* (30 L. D., 608), the Territory of New Mexico (29 L. D., 364, 399; 34 L. D., 599), and the State of California (34 L. D., 613), and the same conclusion reached.

The language of the statute in question of itself appears conclusive upon the question involved, "and other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, where sections 16 or 36 are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections 16 and 36, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right under said sections." (Sec. 2275, amended.)

Therefore the report of this department, dated February 19, 1912, favoring the enactment of H. R. 19344 was made only upon the theory that if any doubt has heretofore existed as to the meaning and effect of the clause of section 2275, Revised Statutes, above quoted, it will be removed by the enactment of the measure and not because of any belief on its part that such exchanges may not be effected under existing law.

The amendment suggested by Mr. Lake is to the effect that nothing in said H. R. 19344, if enacted, "shall impair the rights or claims of any persons to any lands ceded, conveyed, or waived to the United States as a basis for such exchanges where such rights or claims are held adversely to such cession, conveyance, or waiver."

The communication addressed to you by the surveyor general of California recites that Lake has heretofore made applications to purchase surveyed school sections within reservations which had theretofore been used as the basis for indemnity selections by the State, which applications were immediately rejected. It is further stated that Lake had full knowledge of the fact that the State had used such base lands long before his application to purchase same, and that he relies solely upon the technical allegation that the State had no right to surrender school sections surveyed prior to the creation of the reservations as a basis for indemnity. The attorney general of California advises you in the same connection that Lake's proposed amendment is for the purpose of aiding him in clouding the title to the base lands upon which the

State lieu selections rest, permitting him, if successful, in certain litigation now pending in the courts of California, to defeat the claims of the persons who have purchased lieu-section lands from the State or force them to settle with him.

It appears that the Legislature of the State of California passed an act May 1, 1911 (Laws of California, 1911, p. 1408), providing that all applications theretofore filed with the State for sections 16 or 36 within the limits of reservations and upon which no certificates of purchase had issued shall be canceled by the surveyor general and held to be null and void.

While this department has no official connection with or information concerning the attempted purchases by Mr. Lake of such school sections, it can not concede the correctness of his contention, as disclosed by the State surveyor general, but entertains a contrary view, as indicated by its decisions hereinbefore cited. If Mr. Lake or other persons have vested rights in or to any such sections 16 or 36, H. R. 19344, if enacted, can not defeat the same, while the adoption of the amendment proposed might be construed as a recognition that valid claims do exist to such school sections heretofore presented and in some instances accepted, as a sufficient basis for school-indemnity selections. The department is emphatically of the opinion that the proposed amendment should not be adopted.

The amendment proposed by Mr. Bolton is to the effect that the Secretary of the Interior "shall not approve any exchange of lands if the lands selected by the State be, at the time of approval, within the exterior limits of any land withdrawn under the provisions of an act entitled 'An act to authorize the President of the United States to make withdrawals of public lands in certain cases,' approved June 25, 1910."

The State surveyor general and attorney general advise you that the State of California is opposed to this amendment on the ground that under it the State would waive the rights of persons who have purchased lieu-selection lands from the State. The attorney general states that—

"Bolton fears that bill introduced by you will injure rights of his clients who are claiming as mineral claimants. The State has selected certain lands for said applicants whose applications are on file in the State land office. They claim that as land was subject to selection their rights attach. If this is so, they should not be defeated by Bolton's amendment."

It appears from the records of this department that indemnity school selections were filed by the State of California upon unreserved public land in lieu of school sections within reservations, and that thereafter the lands covered by the indemnity school selections were, with adjoining tracts, withdrawn under the provisions of the act of Congress approved June 25, 1910 (36 Stat., 847), for classification in aid of legislation and for other public purposes, and that such State selections are now suspended and pending. In this connection it also appears from the records of this department that certain mineral claimants, for whom Mr. Bolton appears as counsel, are contending before this department that certain of the State selections in question should be rejected and canceled by the Secretary of the Interior because of the existing withdrawals, and the proposed amendment would seem designed to effect this end through legislation. H. R. 19344 does not direct or compel the Secretary of the Interior to approve these or other indemnity selections, but leaves him the same discretionary power that he now possesses in such cases.

Under section 2276, Revised Statutes, amended, lands selected in lieu of school sections surrendered under section 2275, Revised Statutes, are required to be "unappropriated surveyed public lands, not mineral in character." The uniform holding of the courts and repeated rulings of the department with reference to indemnity school selections and other selections requiring approval of the Secretary of the Interior are to the effect that no vested rights are secured through such selections until same have been duly approved by the Secretary of the Interior, all proceedings prior thereto amounting to but a tender of a selection.

It is thus apparent that full power and authority rest with the Secretary of the Interior under existing law, and will rest with him under H. R. 19344, if enacted, to adjudicate such selections and any claims arising in connection therewith, as well as to give due effect to any withdrawals made under the provisions of the act of June 25, 1910, *supra*.

The department further believes that the Secretary of the Interior should not be by act of Congress deprived of authority to approve such selections as to the lands covered thereby which are found to be nonmineral in character and otherwise subject to selection. Furthermore, selections made, but not approved, prior to the withdrawal of the selected lands under the act of June 25, 1910, are held subject to action under such withdrawal, and are not approved, certified, or patented during the existence of such withdrawal.

It is further noted that this amendment relates to lands "within the exterior limits of any land withdrawn," etc. This is specially objectionable, as a number of tracts

within the exterior limits of a withdrawal may be excluded therefrom, and the amendment should therefore be limited at least to the lands withdrawn. Being of opinion, however, that no good reason exists for this amendment, I must recommend that it be not adopted.

I have examined the opinion of Judge Wellborn in the case of *Hibberd v. Slack* (84 Fed. Rep., 571), in which it was held that the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, does not contemplate an exchange of lands between a State and the United States, but only indemnity for loss to a State because of inclusion of school lands within a forest or other reservation prior to their identification by the Government survey, and I find that a contrary rule has prevailed in this department since January 30, 1899, ex parte State of California (28 L. D., 57); *Dunn et al. v. California* (30 L. D., 608); opinion of Assistant Attorney General, now Justice Van Devanter (29 L. D., 364); also 29 L. D., 399; opinion of Assistant Attorney General Campbell (34 L. D., 599); ex parte State of California (34 L. D., 613).

After a careful review of the several decisions bearing upon this subject, and especially in view of the fact that the act of February 28, 1891, was a general adjustment act, I see no reason to depart from the present holding of the department on this subject.

In accordance with your request, I will be pleased to have a representative of this department appear before the Committee on the Public Lands at 10 o'clock a. m. April 2, 1912.

Very respectfully,

SAMUEL ADAMS,
First Assistant Secretary.

To carry out the provisions of H. R. 19344, which will apply to H. R. 25738, the bill H. R. 22522, by Mr. Raker, was introduced, which is as follows:

A BILL Appropriating money for the purpose of making field examinations of selected lieu lands in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the sum of twenty-eight thousand dollars be, and is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, to be immediately available, and to be expended under the direction of the Secretary of the Interior, for the purpose of making field examinations of selected lieu lands in California.

Upon bill H. R. 22522 the following report was made to the chairman of the Committee on Appropriations by the honorable Secretary of the Interior, Walter L. Fisher :

DEPARTMENT OF THE INTERIOR,
Washington, May 25, 1912.

DEAR SIR: In compliance with your request of May 24, 1912, I inclose herewith copy of department letter of May 2, relating to H. R. 22522.

Very respectfully,

CARMÍ A. THOMPSON,
Assistant Secretary.

HON. JOHN E. RAKER,
House of Representatives, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, May 2, 1912.

HON. JOHN E. RAKER,
House of Representatives.

MY DEAR SIR: I am in receipt of your letter of the 23d instant relative to H. R. 22522, entitled "A bill appropriating money for the purpose of making investigations of selected lieu lands in California."

In reply thereto I have the honor to advise you that an estimate for an appropriation of \$28,000 to enable this department to expeditiously carry into effect the provisions of said bill is now being prepared by the Commissioner of the General Land Office for my approval and transmission to the Secretary of the Treasury, to be forwarded to Congress for appropriate action.

Very respectfully,

WALTER L. FISHER, *Secretary.*

S. Rept. 945, 62-2—2

DEPARTMENT OF THE INTERIOR,
Washington, April 10, 1912.

Hon. JOHN E. RAKER,
House of Representatives.

MY DEAR SIR: I am in receipt of your letter of March 29, 1912, inclosing a copy of H. R. 22522, entitled "A bill appropriating money for the purpose of making investigations of selected lieu lands in California," and in accordance with your request I have made a statement to the chairman of the House Committee on Appropriations concerning the same.

For your information I inclose a copy of this statement.

Very respectfully,

WALTER L. FISHER, *Secretary.*

APRIL 10, 1912.

Hon. J. J. FITZGERALD,
Chairman Committee on Appropriations, House of Representatives.

SIR: At the request of Hon. John E. Raker I beg leave to make the following statement with reference to H. R. 22522, entitled "A bill appropriating money for the purpose of making field examinations of selected lieu lands in California," which is now before your committee.

I have caused a careful estimate to be made and find that there are approximately 400,000 acres of land embraced in selections by the State of California which are pending for field investigation to determine the character of the lands. To investigate these lands will require the services of 20 field men for a trifle over five months. At the usual rate of compensation allowed mineral inspectors by the General Land Office it would require, at the lowest figure, \$25,000 to make these examinations. In addition, it is estimated that at least \$3,000 would be necessary for assistants in the General Land Office in order that the reports as they come from the field may be passed upon and the pending selections adjudicated promptly; thus the total amount necessary would be \$28,000. This estimate is a very careful and conservative one.

With the present field force maintained under the appropriation for "Protecting public lands, timber, etc.," in the sundry civil bill, it would be impossible to put such a force of men upon the work of these California selections. To do so would prejudice very seriously other important investigations pending not only in the State of California but throughout all the public-land States.

At the present time there are three mineral inspectors assigned to the San Francisco field division, which comprises all of the State of California except the Los Angeles district and also includes the State of Nevada, and there are three mineral inspectors assigned to the Los Angeles field division, which comprises the district of Los Angeles and the State of Arizona, so that it will readily be seen that were the mineral inspectors now assigned to the California divisions put exclusively upon the work of investigation of the land selected by the State it would require over a year to complete the examination thereof. It would, however, be highly prejudicial to the interests of the Government in other important lines of investigation to put these men on this work exclusively, and good administration would not permit this to be done.

One of the most important lines of work now pending before the General Land Office is the investigation of oil lands in the State of California. The Commissioner of the General Land Office in a statement made to me under date of January 23, 1912, in support of the estimates for the appropriation for "Protecting public lands, timber, etc.," for the fiscal year ending June 30, 1913, to which I called your attention by my letter of February 8, 1912, had this to say concerning this work:

"There are 3,970,429 acres of land withdrawn in eight States and Territories as oil lands. In the State of California alone the oil area withdrawn is more than a million and a half acres, and especial attention is now being given to the situation in that State, where oil operations are being conducted very extensively. Under conditions which now obtain, particularly in the California fields, the office can not defer investigation of the operations of locators in this field until application for patent is filed, for only those operators who are certain of patent will apply for the same, the others being content to rest upon their possessory rights, and these latter will continue to remove for commercial purposes the oil within the limits of their locations. As most of these companies, so I am advised, are financially irresponsible, steps must be taken looking toward a thorough investigation to determine what companies are operating according to law and in good faith, so that those who are not so doing may be stopped before irreparable damage to the Government ensues by reason of their operations.

"As indicating the magnitude and expense of this work in the California fields, I would state that in a suit about to be instituted to recover lands valuable for oil and other minerals an appropriation of \$3,000 was given the Department of Justice in the last urgent deficiency bill for abstracts only. The evidence in this suit and in all others which may be brought must be secured by agents of this office."

In order to meet the situation which confronts the General Land Office with respect to the oil territory in California, plans are now being considered whereby additional field men may be assigned to this important work during the next fiscal year, providing, of course, the appropriation requested from Congress for the Field Service is granted.

In addition to the oil investigations there are various other important lines of investigation demanding the attention of the General Land Office, particularly the field work in Alaska, the Carey Act investigation work in the various States, and the various other investigations necessary by reason of coal, oil, phosphate, and water-power withdrawals, in addition to the ordinary work of the field force in the investigation of alleged fraudulent entries, all of which are set forth in the commissioner's letter of January 23, 1912.

It will therefore be apparent that to investigate the pending California selections with any degree of expedition will require the additional appropriation which is proposed by the bill under consideration. Without this additional appropriation for that purpose the examination of these selected lands will of necessity have to await the regular order of investigation, and with the force available it is problematic when the investigations would be completed.

It will be observed that the bill as introduced appropriates the amount designated only for field examinations, but as it will be necessary to adjudicate the reports of these examinations in the General Land Office it will require some additional assistance in order to expedite action upon the same when the field investigations are completed. It is suggested therefore that the bill be amended by inserting after the last word in line 8, the following: "and of adjudicating the same in the General Land Office."

I strongly recommend the passage of this bill, as it will bring about a speedy adjustment and determination of the grant to the State.

Very respectfully,

WALTER L. FISHER,
Secretary.

And thereafter on April 30, 1912, the following report was made by the Secretary of the Treasury to the Speaker of the House of Representatives:

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, April 30, 1912.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I have the honor to transmit herewith, for the consideration of Congress, copy of a communication of the Secretary of the Interior of the 29th instant, submitting an estimate of appropriation in the sum of \$28,000 to enable the Commissioner of the General Land Office to make field examinations of selected lieu lands in the State of California and to adjudicate the same in the General Land Office, the same to be made immediately available.

The Secretary of the Interior states that the necessity for the submission of this estimate at this time is fully set forth in the note accompanying the same.

Respectfully,

FRANKLIN MACVEAGH, *Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, April 29, 1912.

THE SECRETARY OF THE TREASURY.

SIR: I have the honor to forward herewith, through your department, for the appropriate action of the Congress, an estimate from the Commissioner of the General Land Office for an appropriation of \$28,000 for the purpose of meeting the expense pertaining to field examinations of selected lieu lands in the State of California for the fiscal years of 1912 and 1913. The necessity for the proposed expense is fully set forth in a note embodied in the estimate.

Very respectfully,

WALTER L. FISHER, *Secretary.*

Estimates of appropriations required for the service of the fiscal year ending June 30, 1912 and 1913, by the General Land Office.

DEPARTMENT OF THE INTERIOR.

PUBLIC LANDS SERVICE.

Examination of California lieu selections, 1912 and 1913—

To enable the Commissioner of the General Land Office to make field examinations of selected lieu lands in the State of California and to adjudicate the same in the General Land Office, \$28,000, to be immediately available: *Provided*, That agents or others employed or detailed under this appropriation shall be allowed per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence, at a rate not exceeding \$3 per day each and actual necessary expenses for transportation, including necessary sleeping-car fares (submitted)..... \$28,000

NOTE.—There are approximately 400,000 acres of lands embraced in selections by the State of California which are pending for field investigation to determine the character thereof. To investigate these lands will require the services of 20 field men for a trifle over five months. At the usual rate of compensation allowed mineral inspectors by the General Land Office it would require the full amount of this estimate to complete the work. This estimate is a very careful and conservative one.

With the present field force maintained under the appropriation for "Protecting public lands, timber," etc., in the sundry civil bill, it would be impossible to put such a force of men upon the work of these California selections. To do so would prejudice very seriously other important investigations pending, not only in the State of California but throughout all the public-land States.

The mineral inspectors at present assigned to the California field divisions could not, if placed exclusively upon this investigation, complete them in a year. It would, however, be highly prejudicial to the interests of the Government in other important lines of investigation to put these men on this work exclusively, and good administration would not permit this to be done.

One of the most important lines of work now pending before the General Land Office is the investigation of oil lands in the State of California. In a statement made by me to the department under date of January 23, 1912, in support of the estimates for the appropriation for "Protecting public lands, timber," etc., for the fiscal year ending June 30, 1913, to which the Secretary called the attention of the chairman of the House Appropriation Committee by his letter of February 8, 1912, had this to say concerning this work:

"There are 3,970,429 acres of land withdrawn in eight States and Territories as oil lands. In the State of California alone the oil area withdrawn is more than a million and a half acres, and especial attention is now being given to the situation in that State, where oil operations are being conducted very extensively. Under conditions which now obtain, particularly in the California fields, the office can not defer investigation of the operations of locators in this field until application for patent is filed, for only those operators who are certain of patent will apply for the same, the others being content to rest upon their possessory rights, and these latter will continue to remove for commercial purposes the oil within the limits of their locations. As most of these companies, so I am advised, are financially irresponsible, steps must be taken looking toward a thorough investigation to determine what companies are operating according to law and in good faith so that those who are not so doing may be stopped before irreparable damage to the Government ensues by reason of their operations.

"As indicating the magnitude and expense of this work in the California fields, I would state that in a suit about to be instituted to recover lands valuable for oil and other minerals an appropriation of \$3,000 was given the Department of Justice in the last urgent deficiency bill for abstracts only. The evidence in this suit and in all others which may be brought must be secured by agents of this office."

In order to meet the situation which confronts the General Land Office with respect to the oil territory in California, plans are now being considered whereby additional field men may be assigned to this important work during the next fiscal year, providing, of course, the appropriation requested from Congress for the field service is granted.

In addition to the oil investigations there are various other important lines of investigation demanding the attention of the General Land Office, particularly the field work in Alaska, the Carey Act investigation work in the various States, and the various other investigations necessary by reason of coal, oil, phosphate, and water-power withdrawals, in addition to the ordinary work of the field force in the investi-

gation of alleged fraudulent entries, all of which are set forth in my letter of January 23, 1912.

It will, therefore, be apparent that to investigate the pending California selections with any degree of expedition will require the additional appropriation which is proposed by H. R. 22522 now under consideration. Without this additional appropriation for that purpose the examination of these selected lands will of necessity have to await the regular order of investigation, and with the force available it is problematic when the investigations would be completed.

This estimate is submitted in accordance with the suggestion of the chairman of the Appropriations Committee of the House of Representatives and is to take the place of H. R. 22522, entitled "A bill appropriating money for the purpose of making field examinations of selected lieu lands in California."

The amount asked for is the same as that provided in the said bill and is deemed imperatively necessary for the public service in order to expeditiously carry into effect the provisions thereof.

It may be stated in this connection that owing to a controversy between the Federal Government and the State of California relative to certain overcertifications of land to the State, the adjustment of the State's school land grant has been practically in a state of suspension for some years. June 16 last a basis of adjustment of this controversy was agreed upon by the Land Department and officials of the State, and during January of this year vigorous measures were entered upon to carry out this agreement. However, the adjustment had not sufficiently proceeded to such a stage at the date of submitting the regular estimates of appropriations to intelligently permit of the submission of an estimate similar to that herewith. As a result of the vigorous measures taken by this office, the adjustment has now proceeded to such a stage as to render field examination of the selected lieu lands imperative.

Submitted April 26, 1912.

FRED DENNETT, *Commissioner*.

On June 27, 1912, Senator Perkins introduced an amendment to H. R. 25069 for the purpose of carrying out the provisions of bill H. R. 19344, now bill H. R. 25738, which amendment is as follows:

"On page 96, after line 24, insert the following:

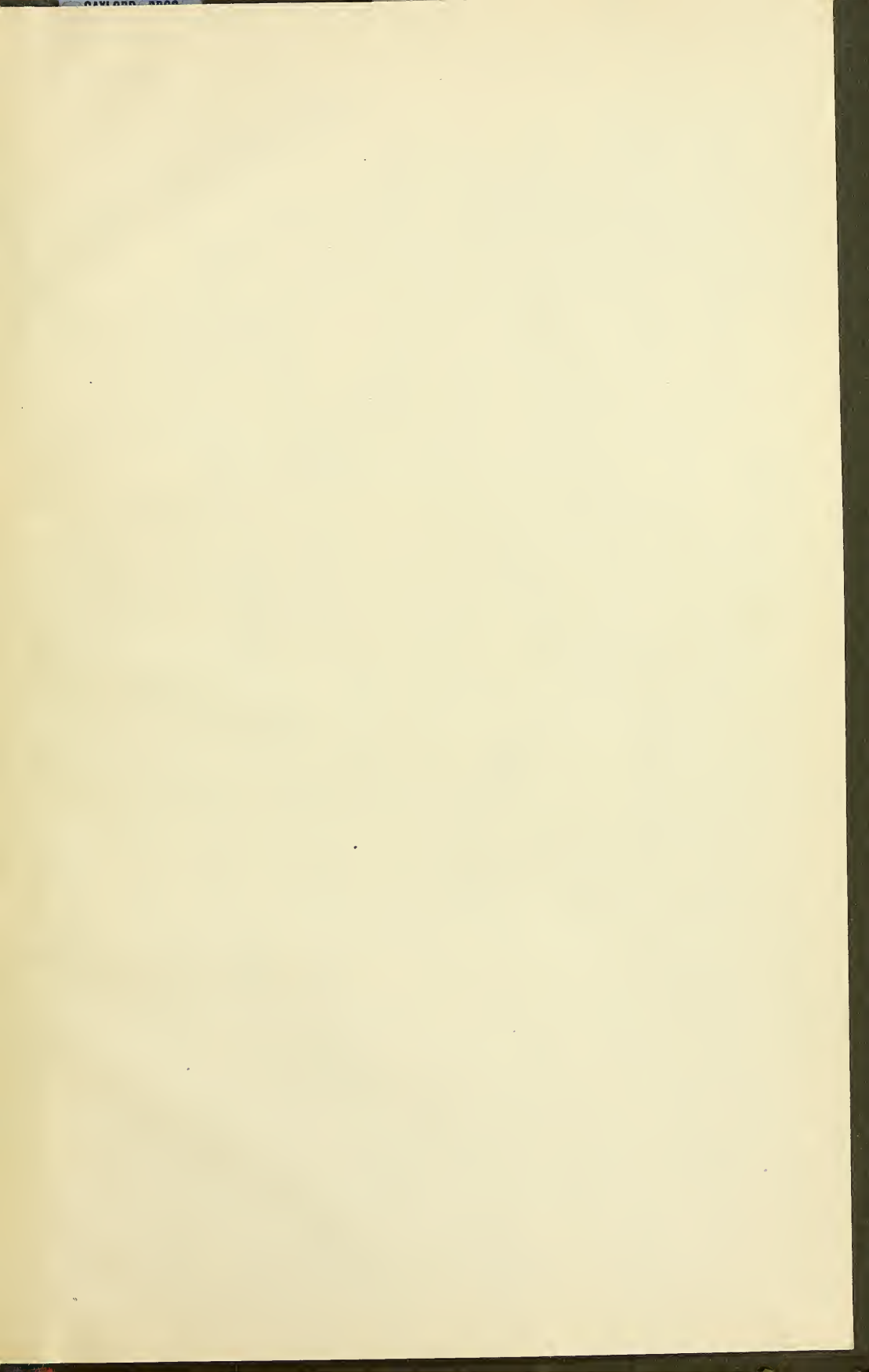
"Examination of California lieu selection, nineteen hundred and twelve and nineteen hundred and thirteen: To enable the Commissioner of the General Land Office to make field examinations of selected lieu lands in the State of California and to adjudicate the same in the General Land Office, twenty-eight thousand dollars, to be immediately available: *Provided*, That agents or others employed or detailed under this appropriation shall be allowed per diem, subject to such rules and regulations as the Secretary of the Interior may prescribe, in lieu of subsistence, at a rate not exceeding three dollars per day each, and actual necessary expenses for transportation, including necessary sleeping-car fares."

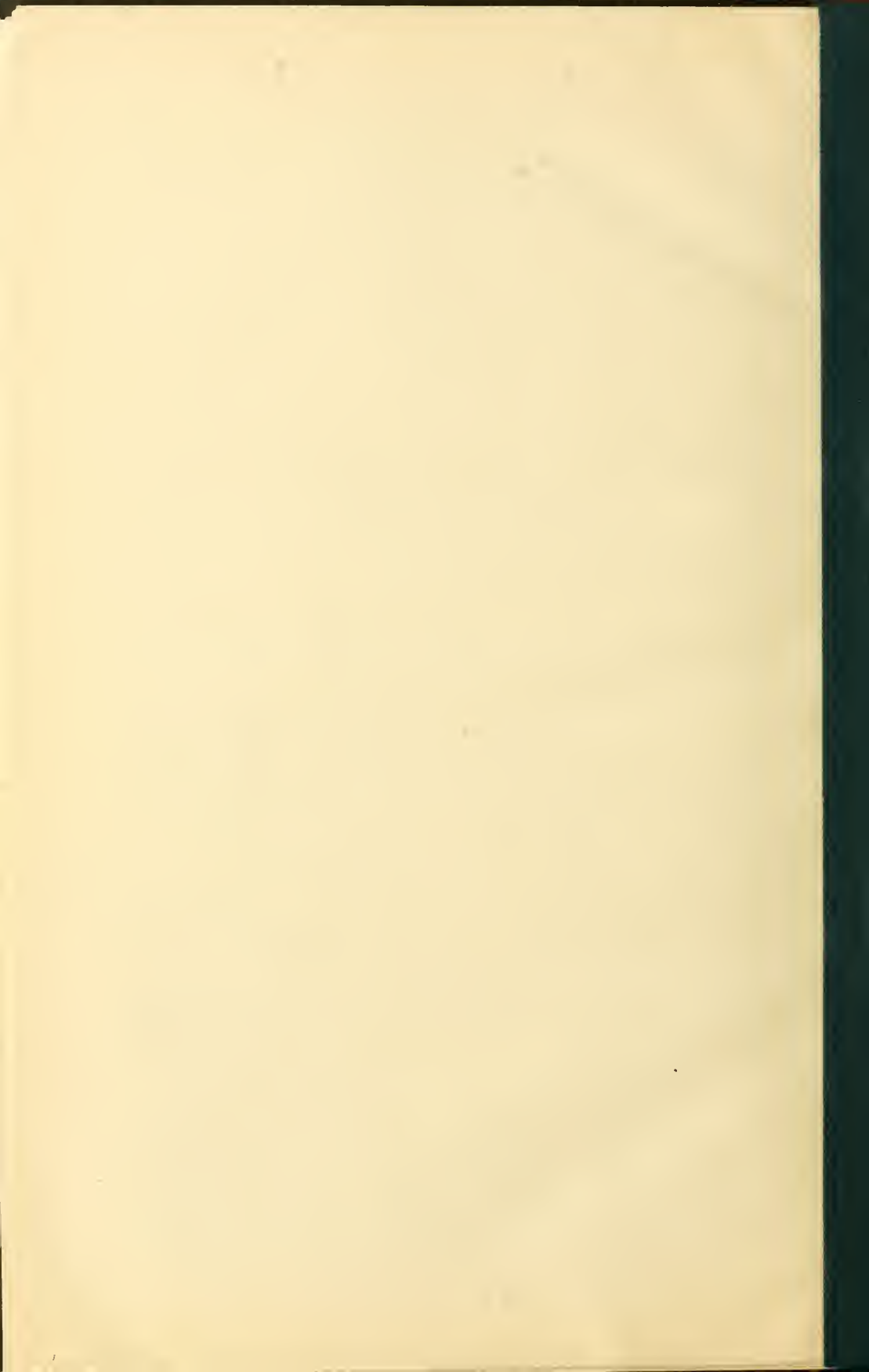
The question of appropriation was referred to in connection with the bill upon which this report was made, namely, H. R. 25738, for the purpose of showing the necessity of the passage of this later bill.

The enactment of H. R. 25738 is important to the State of California. It involves over 500,000 acres of land, the title to which should be settled to the end that those who are claiming such lands may have a perfect title and the State obtain its taxes on the same, as well as the proper clearing up and straightening out the title coming from the State of California to the Government.

The committee have given this matter exhaustive consideration, and after such examination and consideration are unanimously of the opinion that the legislation is right and proper, in the interests of justice, and necessary, and should be passed at this session of Congress.







GAYLORD BROS.
MAKERS
SYRACUSE, - N.Y.
PAT. JAN. 21, 1908

LIBRARY OF CONGRESS



0 021 324 722 0